

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1837 of 1998

with

SPECIAL CIVIL APPLICATION NOS. 3897, 3898, 3899, 3900 TO

3908, 3911 TO 3921, 4130, 4132, 4136, 4137, 4139, 4300, 4303, 4304, 4306, 4308, 4352, 4353, 4355 TO 4374, 4660, 4663, 9426, ALL OF 1998

WITH

SPECIAL CIVIL APPLICATION NO. 4191 OF 1999,

WITH

SPECIAL CIVIL APPLICATION NOS. 3666, 3865, 3888, 3889, 3890, 3892, TO 3896 ALL OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT AMBUJA CEMENTS LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1837 of 1998

for Petitioners

MR JAYANT PATEL for Respondent No. 1

MS AVANI S MEHTA for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.K.RATHOD

Date of decision: 07/10/1999

ORAL JUDGEMENT

In this group of petitions under Article 226 of the Constitution of India, common questions are involved and, therefore, upon request, all the matters are being disposed off by this common judgment. At the out set, projection of the facts giving rise to the present group of petition need narration. All petitions are directed against the action of the respondents authorities pursuant to the Notification No. 42/97.S.T dated 5.11.97. In short, gist of genesis of the controversy is revolving around the right to levy of service tax and the liability for payment of such service tax pursuant to the said Notification.

2. In exercise of the powers conferred by subsection) read with sec.94(2) of the Finance Act (Act 32 of 1994), the first respondent issued the said notification so as to amend the service tax rules, 1994 ("the Rules" for short) Since the main controversy is about the rights and the liabilities emerging from the said Notification it would be quite appropriate to refer the said notification which reads as under :

"In exercise of the powers conferred by sub-section (1), read with sub-section (2) of Section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-"

The petitioners have, inter-alia, contended that the action of the respondent No. 1 Union Government pursuant to the aforesaid notification in providing that a person chargeable to service tax in relation to services provided by the goods transport operator shall be every persons who pays for is liable to pay either himself or through his assignee for the transportation of the goods by road in goods carriage. It is, therefore,

contended that such a provision with regard to the service tax creates a charge of service tax on every person providing any taxable service. Therefore, in most of the petitions, exercise of the said power is challenged contending that the notification is ultra vires of Article 14 of the Constitution of India.

In view of the impugned notification, person or agency providing taxable service was made liable to collect and pay to the Government the service tax at, the specified rates. The levy of service tax is contended to be not permissible, to be shifted to the persons availing the service and for this purpose, sub section 68(1)(A) of the said Act is challenged to be ultra vires of the charging section 66 of the Act which provides for charge on service tax as a tax provided to any person by the person responsible. Section 66 of the Act which is a charging section for the levy in question provide that the levy is only taxable service provided to any person that is to say a person who provides taxable service as to discharge the liability. It is, therefore, the contention of the petitioners that section 68(1)(A) of the Act is ultra vires the provisions of section 66 of the Act and is unconstitutional.

In short, taking into account the contours of the controversy, the main challenge is against the notification issued under rule 2(d)(xviii) contending that it is ultra vires and unconstitutional. It may be mentioned that in so far as the challenge against sec.68(1)(A) of the Act is concerned, is not pressed in this group of petitions. After having considered the entire conspectus of the controversy of the relevant proposition of law, the dispute is squarely covered and settled by the decision of the Honourable Supreme Court in case of Laghu Udyog Bharati versus Union of India reported in 99 (112) ELT 365 SC. It is very clear from the plain reading of section 14 that the Honourable Supreme Court has quashed rule 2(d) (xvii) of the rules by virtue of which the impugned notification is issued by holding the same to be ultra vires the Act itself. In so far as the present group of petitions is concerned, the petitioners are the goods transport operator and the controversy raised by them is thus directly covered attracting the ration of the said decision of the Honourable Supreme Court of India and, therefore, it would not detain us any longer and the entire group could be disposed off in light of the said decision of the apex Court.

In view of the reasons stated above, all these

petitions are allowed. The impugned notification which came to be issued by the first respondent is held to be ultra vires the Act. Since the impugned notification is held to be ultra vires the Act itself, and for that, the petitions are allowed, resultant re levy or any tax, if any paid by the petitioners shall be refunded within ten weeks from the date of making such a demand, by the competent authority. Entire group shall accordingly stand disposed off without any order as to costs.

7.10.1999.

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Vyas